



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 7147337

Date: FEB. 5, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a physician and researcher specializing in neuropathology, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was working as an "[redacted] pathology resident" in the Department of Pathology and Laboratory Medicine at the University of [redacted]. He provided a letter from University of [redacted] Medical Center offering him an appointment in the Department of Pathology as a "Fellow in [redacted]" set to begin in July 2018, and a subsequent letter from University of [redacted] School of Medicine confirming his employment. The Petitioner also presented an offer from [redacted] Hospital and Clinics for a position as a postgraduate "fellow in Neuropathology beginning July 1, 2019 through June 30, 2021."⁴

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that he intends to continue his neuropathology research relating to the pathophysiology and diagnosis of neurodegenerative diseases such as Alzheimer's disease. He explained that his proposed research is aimed at understanding why certain individuals "are more vulnerable to [redacted]" and identifying "the starting event which leads to [redacted] in Alzheimer's patients and any other disease which are associated with [redacted] protein." The Petitioner also stated that he plans to undertake research involving "protective mechanisms from chronic traumatic encephalopathy" (CTE).

The record includes information about neurodegenerative diseases from the Harvard NeuroDiscovery Center and World Health Organization. In addition, the Petitioner provided webpages from the Centers for Disease Control and Prevention (CDC) and the National Center for Advancing Translational Sciences discussing traumatic brain injuries, Alzheimer's disease, and primary progressive aphasia (an initial manifestation neurodegenerative diseases). For example, the documentation from CDC indicates that an estimated "5 million Americans were living with Alzheimer's disease" in 2013. The record therefore supports the Director's determination that the Petitioner's proposed endeavor has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of his work. In addition to the aforementioned information from CDC and other health organizations, the Petitioner presented letters of support discussing the potential benefits of his

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his current and prospective positions to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

proposed research and how it stands to advance his field. For example, [REDACTED], research professor of neuroscience at [REDACTED] University, asserted that the Petitioner's proposed work "is highly important to public health" and offers diagnostic "methods for the pathobiology of neurodegenerative diseases such as Alzheimer's disease, frontotemporal dementia and chronic traumatic encephalopathy." The record also includes documentation indicating that the benefit of the Petitioner's proposed research has broader implications, as the results are disseminated to others in the field through medical journals and conferences. As the Petitioner has documented both the substantial merit and national importance of his proposed neuropathology research, we conclude that he meets the first prong of the *Dhanasar* framework.⁵

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. As previously noted, his clinical work does not meet the first prong of the *Dhanasar* framework. Because the Petitioner's proposed neuropathology research has broader implications for the field (unlike his work as a clinician), our analysis under this prong will focus on whether he is well positioned to advance his proposed research relating to the pathophysiology and diagnosis of neurodegenerative diseases. For the reasons discussed below, the evidence is insufficient to demonstrate that he is well positioned to advance that research under *Dhanasar*'s second prong.

The record includes documentation of the Petitioner's curriculum vitae, academic credentials, medical certifications, peer review activities, published articles, and conference presentations. He also offered evidence of articles that cited to his published work⁶, and reference letters discussing his past research projects.

In letters supporting the petition, several professors discussed the Petitioner's research aimed at neurodegenerative diseases.⁷ For example, regarding the Petitioner's CTE research, [REDACTED] clinical professor at University of [REDACTED] stated that the Petitioner investigated [REDACTED] and found that such "compression reduced the [REDACTED] without inducing secondary damage in [REDACTED]"

⁵ With respect to the Petitioner's patient care duties at the hospitals where he intends to work, while these endeavors have substantial merit, the record does not establish that his clinical work would impact the field of neuropathology or the U.S. healthcare industry more broadly, as opposed to being limited to the patients he serves. Accordingly, without sufficient documentary evidence of their broader impact, the Petitioner's clinical activities do not meet the "national importance" element of the first prong of the *Dhanasar* framework. Similarly, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

⁶ For instance, as of March 2019, the Petitioner's article in *Neuropathology* had received 31 citations since its publication in 2013. The Petitioner contends that he has a stronger citation record than Dr. Dhanasar, the petitioner in our *Dhanasar* precedent decision. While we listed Dr. Dhanasar's "publications and other published materials that cite his work" among the documents he presented, our determination that he was well positioned under the second prong was not based on his citation record. Rather, in our precedent decision we found "[t]he petitioner's education, experience, and expertise in his field, the significance of his role in research projects, as well as the sustained interest of and funding from government entities such as NASA and AFRL, position him well to continue to advance his proposed endeavor of hypersonic technology research." *Id.* at 893. We look to a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor and citations are merely one factor among many that may contribute to such a finding.

⁷ While we discuss a sampling of these letters, we have reviewed and considered each one.

care.” Likewise, [redacted] associate professor at [redacted] University, asserted that the Petitioner researched [redacted] and “observed a substantial reduction in [redacted] injuries and subconcussive [redacted] injuries.” [redacted] further noted that this “comprehensive assessment of the risk of [redacted] following the use of [redacted] collars” was published in the *Journal of Neurotrauma*. The record includes a January 2018 citation report from Google Scholar indicating that the aforementioned article has received four citations since its publication in 2017.⁸

With respect to the Petitioner’s work involving progressive aphasia, [redacted] professor of neuropathology at University of [redacted] indicated that the Petitioner found that [redacted], [redacted] contended that “[t]hese findings may potentially lead to the development of anti-inflammatory medications that treat the inflammation that is seen in this neurodegenerative disorder,” but the Petitioner has not shown that his findings have been implemented, utilized, or applauded by others in the field.

Regarding the Petitioner’s research relating to the [redacted] in Alzheimer’s disease, [redacted] professor of pathology at University of [redacted], stated that the Petitioner investigated the role of [redacted] in [redacted] protection against [redacted] in neurodegenerative disorders and published his findings in *Neurobiology of Aging*. [redacted] asserted that the Petitioner “found a significant association between age-related [redacted] loss, tangle formation in [redacted], and [redacted] pathology in epitopes.” The record includes two additional letters of support from professors at the University of [redacted] and University of [redacted] who each provided two examples of other researchers that cited the Petitioner’s article in *Neurobiology of Aging* in their published work. The aforementioned Google Scholar report reflects that this article has been cited nine times since 2015. The Petitioner, however, has not demonstrated that this number of citations constitutes a record of success or a level of interest in his work from relevant parties sufficient to meet *Dhanasar*’s second prong.

With regard to his peer review activities, the Petitioner provided evidence indicating that he reviewed articles for *Journal of Neurology & Translational Neuroscience*, *Pediatric Surgery: Clinics in Surgery*, and *Austin Journal of Clinical Pathology*. The Petitioner, however, has not documented the reputation of these journals or offered other documentation demonstrating that his peer review experience rises to the level of rendering him well positioned to advance his proposed neuropathology research. Nor does the record show that the Petitioner’s occasional participation in the widespread peer review process represents a record of success in his field or that it is otherwise an indication that he is well positioned to advance his research endeavor.

⁸ Two of these citations reflect self-citation by the Petitioner’s coauthor, [redacted]. The Petitioner provided October 2017 data from Clarivate Analytics regarding baseline citation rates and percentiles by year of publication for various research fields, including “Neuroscience & Behavior.” This documentation from Clarivate Analytics states that “[c]itation frequency is highly skewed, with many infrequently cited papers and relatively few highly cited papers. Consequently, citation rates should not be interpreted as representing the central tendency of the distribution.” Regardless, the Petitioner has not demonstrated that the number of citations received by his article in *Journal of Neurotrauma* reflects a level of interest in his work from relevant parties sufficient to meet this prong.

As further evidence under *Dhanasar*'s second prong, the Petitioner provided documentation of his plans for work as an [redacted] pathology resident at University of [redacted] [redacted]⁹, a cytopathology fellow at University of [redacted] Medical Center, and a postgraduate fellow in neuropathology at [redacted] Hospital and Clinics. On appeal, the Petitioner contends that his "research has consistently been funded by large institutions" such as the aforementioned organizations, but the record does not show the specific amount of research funding or grants he has received to undertake his proposed research.

The evidence indicates that the Petitioner has conducted, published, and presented research during the training phases of his medical career, but he has not shown that this work renders him well positioned to advance his proposed neuropathology research. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner, however, has not shown that his published and presented work has served as an impetus for progress in the neuropathology field, that it has affected diagnostic or treatment protocols for neurodegenerative diseases, or that it has generated substantial positive discourse in the neuropathology research community. Nor does the evidence otherwise demonstrate that his work constitutes a record of success or progress in researching neurodegenerative disorders. As the record is insufficient to show that the Petitioner is well positioned to advance his proposed research endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that he is eligible for a waiver due to his medical training, knowledge and skills in his specialty, research experience and accomplishments, the importance of his field, and the impracticality of labor certification. However, as the Petitioner has not established that he is well positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

⁹ The September 2017 employment letter confirming this residency position stated that the Petitioner's "annual salary is \$64,160." The Petitioner, however, has not explained how this compensation for his clinical duties constituted funding for his proposed research projects.

ORDER: The appeal is dismissed.